Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

v.

T&T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOR THE SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a state court violate the Due Process Clause of the Fourteenth Amendment when it exercises personal jurisdiction over a foreign national corporation that places a product into the stream of commerce abroad, without controlling the distribution of that product, on the basis of assumptions that the foreign national corporation (a) expected that the product would reach the forum state and (b) earned substantial revenue on products brought into the forum state and resold by others?

2. Does a state court offend traditional notions of fair play and substantial justice in violation of the Due Process Clause of the Fourteenth Amendment when it exercises personal jurisdiction over a foreign national corporation that places a product into the stream of commerce abroad, without controlling the distribution of that product, and the product ultimately reaches the forum state?

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Court of Appeal of the State of California are named in the caption.

STATEMENT PURSUANT TO RULE 29.6

Petitioner Bridgestone Corporation, a Japanese corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

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T&T TRUCK & CRANE SERVICE, INC.,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOR THE SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

Bridgestone Corporation ("Bridgestone") respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeal of the State of California, for the Second Appellate District, Division Three, entered in this case.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported at 99 Cal. App. 4th 767 (2002), and is reproduced at App., *infra*, 1a-15a. The opinion and order of the Superior Court of the State of California for the County of Los Angeles is unreported and is reproduced at App., *infra*, 16a-19a.

STATEMENT OF JURISDICTION

The order of the Supreme Court of the State of California denying the petitioner's Petition for Review was issued on September 25, 2002. (App., *infra*, 20a). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, among other things, that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

STATEMENT OF THE CASE

This case arises from a third-party complaint for indemnity, styled as a "cross-complaint," filed against Bridgestone by defendants in an underlying personal injury action pending in the Superior Court of the State of California for the County of Los Angeles. After the court denied Bridgestone's motion to quash service for lack of personal jurisdiction, Bridgestone filed an original action in the California Court of Appeal seeking a writ of mandate. The record showed that Bridgestone did not do business in California. Also, nothing in the record suggested that Bridgestone had any control over the distribution in California of the relevant product. The appellate court nevertheless held that specific personal jurisdiction could be exercised over Bridgestone, a Japanese national corporation that had manufactured, sold and delivered its product abroad to an independent legal entity, which in this case was its wholly owned United States subsidiary, Bridgestone/Firestone Inc. ("Firestone"). Bridgestone unsuccessfully filed a petition for review in the California Supreme Court.

I. Background Of The Constitutional Question Involving Personal Jurisdiction And The Stream Of Commerce Theory

The appropriate exercise of personal jurisdiction by a state court over nonresidents has always been a constitutional concern, inherent in our federal structure and later a part of the due process guarantees of the Fourteenth Amendment. *See Pennoyer v. Neff*, 95 U.S. 714, 722 (1877); *see also Burnham v. Superior Court*, 495 U.S. 604, 639-640 (1990) (collecting cases). The Due Process Clause limits the power of a state court to render a valid personal judgment against a nonresident defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (citing *Kulko v. California Superior Court*, 436 U.S. 84, 91 (1978)).

"'[The] constitutional touchstone' of the determination whether an exercise of personal jurisdiction comports with due process 'remains whether the defendant purposefully established "minimum contacts" in the forum state.'" *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 108-109 (1987) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945))). Minimum contacts must have a basis in "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King*, 471 U.S. at 475. In addition, the Due Process Clause forbids a state court from exercising personal jurisdiction over a nonresident defendant under circumstances that would offend "traditional notions of fair play and substantial justice." *Asahi*, 480 U.S. at 105 (citing *International Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940))).

As developed below, the exercise of jurisdiction over Bridgestone in this case is contrary to well-established Supreme Court precedent holding that placing a product into the stream of commerce is not sufficient to establish personal jurisdiction. In *World-Wide Volkswagen*, 444 U.S. at 291-92, 294, this Court reaffirmed that, as a threshold consideration to any exercise of state court jurisdiction, a nonresident defendant must have certain "contacts, ties or relations" with the forum state. The Court clarified that mere foreseeability by a nonresident defendant that its product might enter the forum state was not an appropriate basis upon which to premise personal jurisdiction. *Id.* at 295 ("'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause."). The Court also stated that foreseeability could *not* be transformed into the requisite minimum contacts by the fact that the defendant "earn[s] substantial revenue from goods used" in the forum state. *Id.* at 298. This conclusion was mandated because if such financial benefits arise from the merely foreseeable or expected occurrence of goods entering the forum state, those benefits do "not stem from a constitutionally cognizable contact with th[e] State." *Id.* at 299.

Following *World-Wide Volkswagen*, state and federal courts applied the teachings of this Court inconsistently. Despite the Court's repeated directive that nonresident defendants must have sufficient "contacts, ties or relations" with a forum state before jurisdiction may constitutionally be exercised, *id.* at 291-92, 294, many state and federal courts misinterpreted dictum in *World-Wide Volkswagen* to permit the opposite of what *World-Wide Volkswagen* held: Those courts allowed the exercise of jurisdiction over manufacturers on the mere basis of their expectation that the products they

had manufactured would be sold in the forum state. *See, e.g., Asahi Metal Indus. Co. v. Superior Court*, 39 Cal. 3d 35, 51-52 (1985) ("[T]he minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state."), *rev'd on other grounds*, 480 U.S. 102 (1987); *see also, e.g., Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (1983), *reh'g granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984); *Ford Motor Co. v. Atwood Vacuum Machine Co.*, 392 So. 2d 1305 (Fla. 1981). *But see Humble v. Toyota Motor Co.*, 727 F.2d 709 (8th Cir. 1984); *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir. 1981).

As a direct consequence of this confusion, this Court revisited the scope and application of the stream of commerce doctrine in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). Like this case, *Asahi* arose from an indemnification action filed against a foreign manufacturer. The underlying case involved a personal injury suffered by a plaintiff as a result of a tire failure on a California highway. *See id.* at 105-106. The plaintiff filed a product liability action against the manufacturers of the allegedly defective tire, tube and sealant involved. *Id.* at 106. The tube manufacturer filed a cross-complaint seeking indemnity from Asahi Metal Industry, Co., Ltd. ("Asahi"), the Japanese manufacturer of the tube's valve assembly. *Id.* at 106. Asahi had manufactured, sold, and delivered this component outside the United States, and accordingly challenged personal jurisdiction. *Id.* at 105. Following the California Supreme Court's denial of Asahi's petition for a writ of mandate to quash service, this Court reversed. *Id.* at 108.

Echoing *World-Wide Volkswagen*'s emphasis on the importance of respect between sovereigns and the due process restraint on the exercise of personal jurisdiction, this Court in *Asahi unanimously* took note of "the international context" in which the case arose, decreed that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders," and found the exercise of jurisdiction to be unreasonable. *Id.* at 114. The Court also *unanimously* decreed that the focus on "indemnification rather than safety standards" significantly diminished any interest of California, the forum state, in the controversy. *Id.* at 114-15. These points all apply equally here.

The *Asahi* opinion was also remarkable for its sharp division on the key issue of minimum contacts. A four-Justice plurality of the Court, led by Justice O'Connor, maintained that Asahi's practice of selling over 100,000 units annually to the importer, coupled with the expectation that its product would be sold in California—because approximately one-fifth of the assembled product brought into the United States was sold there—did not provide a constitutionally cognizable basis to which jurisdiction could be anchored. *See id.* at 106-113 (O'Connor, J.). Another four Justices, led by Justice Brennan, joined in opining that such conduct and expectations satisfied the requirement for "minimum contacts." *See id.* at 121 (Brennan, J.). The ninth jurist, Justice Stevens, appeared to agree with the O'Connor plurality that a "higher quantum of conduct" than expectation was required for the exercise of jurisdiction, but he concluded that the conduct of Asahi arguably met that heightened standard. *Id.* (Stevens, J.). Given the Court's sharply conflicting opinions, the continuing vitality and scope of the stream of commerce

doctrine remains unsettled, as does the constitutionally permissible reach of U.S. court jurisdiction over foreign defendants.

This case provides the Court with an opportunity to remove the lingering ambiguity in the law of personal jurisdiction, thereby providing much needed clarity and guidance to foreign corporations that, like Bridgestone, need to be able to evaluate their business conduct in light of legal principles articulated by American courts and to govern their conduct accordingly. The legal, business and international comity implications of this case are both apparent and important.

II. The Proceedings Below

This case arises from a third-party complaint for indemnification filed against Bridgestone by defendants in the underlying action. The underlying action involved an alleged personal injury suffered by Dr. John Lee on June 15, 1998, when a tire and wheel failed on an industrial mud-pump trailer stopped at a red light on a California road. The trailer's right rear tire, wheel and other components left the trailer and hit the left rear of Dr. Lee's vehicle, which was stopped nearby. The cause of the incident is unknown.

On February 26, 1999, Dr. Lee filed a complaint for personal injury against Kenai Drilling, Ltd., the owner of the trailer, T&T Truck & Crane Service, Inc., the owner of the truck towing the trailer, and Gene Coker, the driver of the truck (collectively "Truckers"). Nearly one year later, on February 3, 2000, Truckers filed a "cross-complaint" seeking indemnification from Schoettler Tire, the seller and installer of the tire, and Firestone, which sold the tire to the dealer

from which Schoettler purchased the tire. On May 10, 2000, Truckers added Bridgestone, the Japanese manufacturer of the tire, for the sole purpose of seeking indemnification. Bridgestone was served seven months later and moved to quash service for lack of personal jurisdiction.

Bridgestone is a Japanese corporation headquartered in Tokyo. Firestone is a wholly owned subsidiary of Bridgestone, which acquired the stock of The Firestone Tire & Rubber Company in 1988. At all times relevant, Firestone was an Ohio corporation with its principal place of business in Nashville, Tennessee.

Following Bridgestone's motion to dismiss, the trial court permitted jurisdictional discovery, heard the motion, and on June 13, 2001, issued its ruling. The court explained that although a substantial number of tires manufactured by Bridgestone were in California, there was "no evidence" in the record that Bridgestone sold any tires there and it was "limited to selling the product in Japan to its subsidiary" Firestone. App. at 17a. Accordingly, the record lacked evidence of substantial, continuous, and systematic contacts between Bridgestone and the forum state upon which to premise general jurisdiction. The court observed that Firestone does business in California, but correctly explained that "a local subsidiary's contacts with the forum do not create personal jurisdiction over a foreign parent." *Id.* (citing *J.M. Sahlein Music Co. v. Nippon Gakki Co.*, 197 Cal. App. 3d 539, 544 (1987)). The court observed that Truckers had made "no showing" that Bridgestone used its subsidiary in a manner that would permit agency, alter ego, or some other theory of vicarious jurisdiction. *Id.*

Despite these observations, the trial court improperly concluded that the requisite "minimum contacts" existed to establish specific jurisdiction over Bridgestone. *See id.* at 18a-19a. Quoting the plurality opinion authored by Justice O'Connor in *Asahi*, the trial court noted that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Id.* at 18a. To satisfy the *Asahi* plurality's call for "something more," the court then identified a wholly unrelated agreement between Bridgestone and its subsidiary Firestone, which permitted Firestone to use Bridgestone's trademarks when selling Firestone-manufactured tires (as opposed to the Bridgestone-manufactured tire at issue in the case). *Id.* at 19a.

Bridgestone petitioned the Court of Appeal for the Second Appellate District of California for a writ of mandate. Bridgestone noted that the trademark license identified as the "something more" required by the *Asahi* plurality was in no way related to the matter in controversy and that, under *Asahi*, Bridgestone had insufficient jurisdictional contacts with California. In addition, Bridgestone showed that the trial court made the same mistake as the lower court had in *Asahi*: It broadly characterized a mere indemnification claim as one involving "safety issues on a grand scale." App. at 19a. In *Asahi*, this Court, in finding the exercise of jurisdiction to be unreasonable, had unanimously admonished the lower court for making a similar, "overly broad" characterization of the indemnity claim by suggesting it involved "safety standards." 480 U.S. at 114-15.

On June 25, 2002, the Court of Appeal issued its decision. It did not adopt the trial court's flawed reasoning, but instead supplied its own basis for affirmance and thus denied the writ. With respect to the question of whether Bridgestone purposefully availed itself of the benefits of conducting activities in California for purposes of establishing specific jurisdiction, the Court of Appeal "conclude[d] that a manufacturer's placement of goods in the stream of commerce with the expectation that they will be purchased or used by consumers in California indicates an intention to serve the California market 'directly or indirectly,' and constitutes purposeful availment if the income earned by the manufacturer from sale or use of its product in California is substantial." App. at 11a (citations omitted). The Court of Appeal opined, without any record evidence, that Bridgestone expected that a "large volume" of tires it had manufactured, sold, and delivered in Japan would be "regularly distributed for sale in California," and that it derived "substantial income from those sales." *Id.* at 12a. Based on those opinions, the Court of Appeal concluded that Bridgestone had "purposefully availed itself of the benefits of conducting activities in this state." *Id.* The Court of Appeal further concluded that the exercise of jurisdiction over Bridgestone would be convenient because "Truckers apparently are all California residents" and that "judicial efficiency is best served by litigating the plaintiff's claims against Truckers and Truckers' claims against Bridgestone in a single forum." *Id.* at 14a, 15a.

In seeking review (and/or depublication) of the appellate decision by the California Supreme Court, Bridgestone showed that the central holding of the Court of Appeal had been forcefully and clearly rejected in *World-Wide Volkswagen*, where this Court explained both that

(1) "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause;" and (2) "financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State." 444 U.S. at 295, 299. Bridgestone also showed that the exercise of jurisdiction over it would not comport with traditional notions of fair play and substantial justice. Finally, Bridgestone asked the California Supreme Court to consider international comity concerns in weighing the reasonableness of exercising jurisdiction, which the Court of Appeal apparently failed to do.

Despite these arguments, the California Supreme Court denied Bridgestone's petition. *See* App. at 20a. Jurisdiction is now being exercised over this foreign national on the basis that its product, which it manufactured abroad, sold abroad, and delivered abroad, found its way to California due to the unilateral conduct of a legally independent entity, albeit a subsidiary.

Left undisturbed, this case adds to a growing national disharmony in the law. Back in 1985, another foreign national petitioned this Court to grant a writ of certiorari to the Supreme Court of California to address a similar issue of the constitutional exercise of personal jurisdiction where its product had entered the forum state through the unilateral conduct of another. This Court granted that petition, but the opinions announced by the Court revealed sharp divisions, and **no majority holding on a central issue was rendered**. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). Since that time, the confusion in the law has intensified. This case presents the Court with an opportunity to settle, once and for all, the law on this serious question of personal jurisdiction.

REASONS FOR GRANTING THE PETITION

A writ of certiorari should be granted because:

1. The California Court of Appeal has decided a constitutional question in this case in a way that conflicts with decisions of this Court and decided an important question of United States constitutional law that has not been, but should be, settled by this Court;

2. The California Court of Appeal has decided a constitutional question in this case in conflict with decisions on the same issue by federal courts of appeals and state courts of last resort, which themselves appear to be confused, or at least in conflict, about the proper standard to apply; and

3. The questions presented are important and should be settled.

I. The Decision Of The California Court of Appeal Conflicts With Decisions Of This Court

A. The Decision Improperly Reinstates A Foreseeability Test As The Benchmark For Imposing Jurisdiction

World-Wide Volkswagen followed the two-prong analysis established in *International Shoe* for determining whether and when a state may exercise personal jurisdiction over a nonresident defendant. First, a nonresident defendant must have judicially cognizable "contacts, ties, or relations" with the forum state. 444 U.S. at 294. Second, the exercise of personal jurisdiction must be fair and reasonable. *Id.* at 297.

Applying this analysis, the Court in *World-Wide Volkswagen* rejected the notion that personal jurisdiction could constitutionally be premised on concepts of foreseeability or expectation. *See* 444 U.S. at 295-296. The Court elaborated that foreseeability could *not* be transformed into the requisite minimum contacts even by the fact that the defendant "earn[s] substantial revenue from goods used" in the forum state because "financial benefits accruing to the defendant from a collateral relation to the forum state will not support jurisdiction if they do not stem from a constitutionally cognizable contact with th[e] state." *Id.* at 298-299.

The central holding made by the Court of Appeal in this case, which was left undisturbed by the California Supreme Court, employs the precise analysis rejected by this Court in *World-Wide Volkswagen* more than two decades ago. The Court of Appeal found minimum contacts based on its assumptions about foreseeability and revenues earned, *see* App. at 12a, and never truly analyzed reasonableness.

By failing to assess the reasonableness of the exercise of jurisdiction, the California courts' decisions conflict with decisions of this Court. *See Burger King*, 471 U.S. at 477-78 ("[M]inimum requirements inherent in the concept of 'fair play and substantial justice' may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities.") (citing *World-Wide Volkswagen*, 444 U.S. at 292). Even *if* there were sufficient contacts, the Due Process Clause forbids California courts from exercising personal jurisdiction over Bridgestone under circumstances that would offend "traditional notions of fair play and substantial justice." *See Asahi*, 480 U.S. at 105 (citing *International Shoe*, 326 U.S. at 316). A careful inquiry into the reasonableness of exercising jurisdiction is particularly important in the *international context*

where "the procedural and substantive policies of other *nations*" are implicated. *Id.* at 115. As this Court has stressed, "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Id.* (quoting *United States v. First National City Bank*, 379 U.S. 378, 404 (1965)).[1]

In this case, the record shows that Bridgestone does not do business in California; that it sold its product in Japan, in a transaction governed by Japanese law, to an independent legal entity (albeit a subsidiary); and that it did not control the distribution and resale of the product that ultimately reached California. App. at 3a, 4a, 17a-18a. Bridgestone and Firestone are independent legal entities whose separate corporate existences have been respected. As the trial court held, Firestone was not acting as Bridgestone's agent and was not its alter ego. App. at 4a, 17-18a. Yet Bridgestone is being haled into California based on the independent activity of Firestone that Bridgestone in no way controlled. Under these circumstances, Bridgestone should not have expected to be haled into an American court and to do so offends traditional notions of fair play and substantial justice.

Strikingly, it was the California Supreme Court's departure from the governing authority of *World-Wide Volkswagen* that prompted this Court to hear and decide *Asahi*. *See Asahi*, 480 U.S. 102 (1987), *reversing* 39 Cal. 3d

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1. The procedural and substantive interests of foreign sovereigns, coupled with the federal government's interest in foreign relations policies, mandate that courts carefully inquire into the reasonableness of asserting jurisdiction over a foreign defendant and that courts should be guided by "an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Asahi*, 480 U.S. at 115.

35 (1985). The *Asahi* Court reversed the finding of jurisdiction in that case, and effectively reaffirmed (if not strengthened) the rule announced in *World-Wide Volkswagen*. The California court's decision here conflicts with *Asahi*, *World-Wide Volkswagen* and *Burger King*.

B. The Decision Endorses The Exercise Of Jurisdiction Based Upon The Unilateral Activities Of Others

The conflict between the California decision in this case and this Court's decisions is not limited to the revitalization of foreseeability as the test of personal jurisdiction. The California decision permitted the exercise of jurisdiction over Bridgestone based solely upon the unilateral activities of others. The record in this case demonstrated that Bridgestone "is not licensed to do business in California, conducts no business in California and has no presence [t]here, and does not advertise or market its products in California." App. at 3a. All of Bridgestone's purported "contacts with California [were] based on its tire sales [in Japan] to Firestone"—a subsidiary with a separate corporate identity that makes independent decisions about where and how it sells the products it purchases from Bridgestone. App. at 12a; *see also id.* at 7a. Clearly, due process concerns are implicated when, in the absence of any facts supporting an alter ego or agency theory (and the trial court expressly found there were none), a subsidiary's jurisdictional contacts are attributed to its parent.

The California ruling directly contradicts this Court's precedents that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State," and the requirement that "it is essential in each case that there be

some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The Bridgestone tire at issue was in California only because Firestone, through its unilateral activity, chose to sell it in California and purposefully availed *itself* of the privilege of conducting activities within California *after* having purchased the tire from Bridgestone in Japan. The California Court of Appeal thus imputed Firestone's contacts with California to Firestone's parent Bridgestone, in derogation of this Court's rulings in *Hanson*, *World-Wide Volkswagen* and *Rush v. Savchuck*, 444 U.S. 320, 331-332 (1980).[2] In so doing, it has deprived Bridgestone of its due process rights by imposing jurisdiction in the absence of minimum, constitutionally sufficient contacts.

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2. It is axiomatic that the corporate form is a legally sanctioned device designed to limit liability, and the proper use of that device and consistent respect for it by the judiciary "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Accordingly, the law provides no special favor to plaintiffs who encounter "the problems inherent in attempting to sue a foreign corporation that has carefully structured its business so as to separate itself from the operation of its wholly-owned subsidiaries in the United States—as it may properly do." *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 186 (2d Cir. 1998); *see also Asahi*, 480 U.S. at 114 (cautioning about "the reasonableness of stretching the long arm of personal jurisdiction over national borders"). In this case, the Court of Appeal's undisturbed decision seems to be to the contrary, at least for jurisdictional purposes.

II. The Decision Of The California Court of Appeal Conflicts With Decisions Of Other Federal And State Courts, Which Themselves Are Inconsistent About The Proper Constitutional Standard

The decision of the California Court of Appeal conflicts with numerous federal courts of appeals and state courts of last resort. Following the split decision in *Asahi*, the federal and state courts have taken disparate approaches to analyzing questions of jurisdiction over foreign defendants. Nonetheless, the decisions of the California courts here conflict with all of the varied decisions and approaches next discussed.

Given the split decision and resulting uncertainty, some courts have virtually ignored *Asahi*. For example, shortly after the *Asahi* opinions were announced, the Fifth Circuit explained that "the Court's splintered view of minimum contacts in *Asahi* provides no clear guidance." *Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383, 386 (5th Cir. 1989). The Fifth Circuit accordingly continues to gauge the contacts of foreign defendants with the relevant forum state for purposes of specific jurisdiction "by the stream of commerce standard as described in *World-Wide Volkswagen.*" *Id.*; *see also Ham v. La Cienega Music Co.*, 4 F.3d 413, 416 (5th Cir. 1993) (repeating that "[a]bsent rejection by a majority of the Supreme Court, we have continued to apply the stream of commerce analysis found in our pre-*Asahi* cases").

Other federal courts of appeals, and at least one state court of last resort, have taken a similar approach to that of the Fifth Circuit. *See, e.g.*, *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 614 (**8th Cir.** 1994)

(asserting that "five justices" in *Asahi* had "simply followed the Court's earlier statement in *World-Wide Volkswagen*"); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947 (**7th Cir.** 1992) ("[T]his case is being decided on the basis of the more permissive stream of commerce theory. . . ."); *Keen v. Ashot Ashkelon, Ltd.*, 748 S.W.2d 91, 93 (Tex. 1988) (ignoring *Asahi* and relying on earlier decisions), *overruled on other grounds*, *GMC v. Sanchez*, 997 S.W.2d 584 (Tex. 1999); *cf. Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1548 & n.17 (11th Cir. 1993) (noting that "in the absence of further guidance from the Supreme Court, several courts have declined to follow the *Asahi* plurality's analysis, and have instead continued to apply the 'stream of commerce' approach adopted in *World-Wide Volkswagen*").

Yet this response has not been uniform. Several other federal courts of appeals and state courts of last resort have expressly embraced the *Asahi* plurality opinion authored by Justice O'Connor and departed from earlier precedent. *See, e.g., Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 560 (**9th Cir**. 1995) (recognizing as "established law on personal jurisdiction" the following: "[A] defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.") (quoting *Asahi*, 480 U.S. at 112 (O'Connor, J.)); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (**4th Cir.** 1994) ("To permit a state to assert jurisdiction over any person . . . whose product is sold in the state simply because a person must expect that to happen destroys the notion of individual sovereignties inherent in our system of federalism."); *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 683 (**1st Cir.** 1992) (rejecting the notion that "by placing a product into the stream of commerce with

knowledge that the product could end up in the forum state a defendant purposefully establishes minimum contacts in that state"); *Madara v. Hall*, 916 F.2d 1510, 1519 (**11th Cir.** 1990) (stating the holding of *Asahi* to be "that the defendant's mere awareness that some of its products would eventually enter the forum state was not enough to support the exercise of personal jurisdiction" and that "some purposeful act, directed at the forum state" is required); *Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 376 (**8th Cir.** 1990)[3] (rejecting jurisdiction over Japanese corporation that manufactured and sold a product in Japan according to the specifications of a company that resold the product in North Dakota because, "[l]ike the nonresident defendant in *Asahi*, appellees' placement of a product into the stream of commerce, without more, does not constitute an act of the defendant purposefully directed toward the forum State"); *Parry v. Ernst Home Ctr. Corp.*, 779 P.2d 659, 666 (Utah 1989) (rejecting jurisdiction over Japanese manufacturer and seller that had placed an allegedly defective maul into the stream of commerce and knew that sales would be made in Utah because it had not taken active steps to sell the product in Utah); *Witbeck v. Bill Cody's Ranch Inn*, 411 N.W.2d 439, 448 (Mich. 1987).

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3. Even panels *within the same circuit* have struggled—and issued conflicting decisions—with regard to the proper approach to minimum contacts. *Compare Falkirk*, 906 F.2d at 375-76 (adopting Justice O'Connor's approach), *with Barone*, 25 F.3d at 613-15 (abandoning this analysis in favor of a less restrictive stream of commerce analysis) and *Clune v. Alimak AB*, 233 F.3d 538 (8th Cir. 2000) (same). The Eleventh Circuit has gone back and forth as well. *Compare Vermeulen*, 985 F.2d at 1548 (declining to adopt a specific standard), *with Madara*, 916 F.2d at 1519 (embracing the *Asahi* plurality opinion).

Still other courts have responded to the lack of clarity from this Court by fashioning their own jurisdictional tests. *See, e.g., Payne v. Motorists' Mut. Ins. Cos.*, 4 F.3d 452, 455 (**6th Cir.** 1993) ("This court has devised a three-part test for determining when the exercise of personal jurisdiction is appropriate in the absence of a continuous relationship between the forum and the defendant."); *Ruckstuhl v. Owens Corning Fiberglas Corp.*, 731 So. 2d 881, 889 (La. 1999) ("[W]e have no [United States] Supreme Court precedent that guides us as to which theory, if either, represents the law. Nevertheless, we can decide this case without regard to either theory."); *Wagner v. Unicord Corp.*, 526 N.W.2d 74, 78-80 (Neb. 1995) (purporting to apply the *Asahi* plurality, but requiring determination of whether the product was meant or expected to be resold).

Other courts try to apply "both" *Asahi* tests. *See, e.g., Pennzoil Products Co. v. Colelli & Assocs., Inc.*, 149 F.3d 197, 207 (**3d Cir.** 1998) ("[S]ince we have not manifested a preference for either [the O'Connor standard or the Brennan standard], the demands of clarity counsel us to apply both standards explicitly. The clear satisfaction of both the O'Connor and the Brennan standards obviates any need to adopt one over the other."); *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1566 (**Fed. Cir.** 1994) ("We need not join this debate here, since we find that, under either version of the stream of commerce theory, plaintiff made the required jurisdictional showing.").

The decision for which Bridgestone seeks review and the cases cited above show unequivocally that, post-*Asahi*, more than one "constitutional" analysis is being employed to determine whether nonresident defendants, whose products find their way to a particular state exclusively through the

unilateral activity of others, are subject to jurisdiction. The Due Process Clause, however, does not permit identically situated defendants to be treated differently based solely upon the particular state or judicial circuit in which the exercise of jurisdiction is sought.

III. The Questions Presented Are Important And Should Be Settled

This Court has always taken seriously the constitutional implications of the exercise of jurisdiction by a state over those who are neither its citizens nor residents. This Court also has recognized the unique constitutional issues posed by the exercise of personal jurisdiction across national borders. The importance of the principles and questions raised here is manifest throughout the opinions—majority, concurring, and dissenting—in this Court's cases cited above and all others that descend from *Pennoyer* and *International Shoe*. Indeed, in the present case, the importance of the questions presented is underscored because the California Supreme Court—though admonished in *Asahi*—has again acted to permit the exercise of jurisdiction over a foreign national in an action for indemnity despite the complete lack of record evidence of any contacts, ties, or relations between that company and the forum state.

Foreign manufacturers of products that find their way to the United States should be able to know whether and when they are subject to jurisdiction in a given forum. They should also be able to know who, as between themselves and the independent entities (including subsidiaries) that elect to bring their products to specific jurisdictions for resale, has the responsibility for complying with state laws and answering for alleged wrongs. Given the conflicting

interpretations and applications of *Asahi* among the lower federal and state courts over the last 15 years, as well as the failure or refusal of many other courts to adopt any jurisdictional analysis absent clear guidance from this Court, the present case offers this Court the ideal opportunity to clarify applicable law and resolve ongoing conflicts.

CONCLUSION

For the foregoing reasons, we respectfully request that this Court grant the petition for a writ of certiorari to review the decision of the California Court of Appeal.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE DATED AND FILED JUNE 25, 2002, RECEIVED JUNE 26, 2002

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

B151190

(Los Angeles County
Super. Ct. No. BC206120)

BRIDGESTONE CORPORATION,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

T & T TRUCK & CRANE SERVICE, INC., et al.,

Real Parties in Interest.

A foreign tire manufacturer regularly sold a large volume of tires to a California distributor, one of which allegedly failed and caused injury. The injured party sued the driver and others who then cross-complained against the manufacturer for indemnity and contribution. The manufacturer moved to quash service of summons on the ground that it does not have sufficient contacts with California to be subject to personal jurisdiction here. The trial court denied the

motion. We conclude pursuant to *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, and *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664 that the manufacturer purposefully availed itself of the benefits of conducting activities in California and obtained the benefits and protections of California's laws by selling its products to a California distributor for resale in California. We therefore conclude that the manufacturer is subject to the jurisdiction of California courts, and that the trial court properly denied the motion to quash.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff John S. Lee sued defendants T & T Truck & Crane Service, Inc., Kenai Drilling, Ltd., and Gene Coker (collectively, Truckers) in February 1999 for damages arising from the explosion of a trailer tire. Truckers are, respectively, the employer of the truck driver who was towing the trailer, trailer owner, and truck driver. Lee named Bridgestone/ Firestone, Inc. (Firestone), a distributor of Bridgestone tires in California, as an additional defendant in December 1999.

Truckers cross-complained against Schoettler Tire and Firestone in February 2000 alleging that the cross-defendants had manufactured, designed, distributed, sold, installed, or were otherwise responsible for the tire and asserting causes of action for equitable indemnity and contribution. Truckers named Bridgestone Corporation (Bridgestone), a Japanese corporation and manufacturer of the tire, as a cross-defendant in May 2000.

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Bridgestone moved to quash service of summons in January 2001 on the grounds that it does not have sufficient contacts with California to be subject to personal jurisdiction in California. It presented evidence that it is a Japanese corporation, has its principal place of business in Japan, manufactures and sells tires in Japan, is not licensed to do business in California, conducts no business in California and has no presence here, and does not advertise or market its products in California. It also presented evidence that Firestone is a wholly owned subsidiary of Bridgestone, is incorporated in Ohio, has its principal place of business in Tennessee, and maintains a separate corporate identity. Bridgestone argued that merely placing goods in the stream of commerce with knowledge that they may be purchased in California does not constitute sufficient contacts to support personal jurisdiction.

Truckers opposed the motion arguing that Bridgestone has purposefully directed its activities toward California by delivering tires into the stream of commerce with the expectation that they would be purchased by consumers in California, and that it is reasonable to subject Bridgestone to personal jurisdiction here. Truckers also argued that Firestone as a wholly owned subsidiary of Bridgestone should be deemed a general agent for Bridgestone in California. They presented evidence that Firestone had distributed the subject tire and regularly distributed similar Bridgestone tires, and argued that Bridgestone knew that the tires would be purchased by California consumers.

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The court continued the hearing on the motion to quash from February to May 2001 and allowed Truckers to conduct discovery on the issue of personal jurisdiction and to file supplemental opposition papers. Truckers presented evidence that Firestone's distribution center in Ontario, California receives at least 25,000 tires per month manufactured by Bridgestone in Japan, and then distributes the tires to 850 to 900 Firestone dealers, approximately one-half of whom are in California. They also presented evidence that several Bridgestone employees have visited Firestone's distribution center in recent years and that the manager of Firestone's distribution center has visited Bridgestone in Japan on several occasions.

The court denied the motion to quash. It found that Bridgestone sold tires to Firestone in Japan, that no evidence showed Bridgestone sold tires in California, and that Firestone did not act as Bridgestone's general agent in California. It stated that Firestone's contacts with California cannot be imputed to Bridgestone based solely on their subsidiary-parent relationship or on an agency relationship. It concluded, however, that Bridgestone purposely directed its activities toward California by placing in the stream of commerce "[a]n enormous amount of tires" "to be sold primarily in California" and by entering into a trademark license agreement with Firestone. Thus, it concluded, Bridgestone and Firestone created a "symbiotic relationship" to market and distribute tires in California. The court also stated that California's interests in the dispute are substantial because the injured parties are California residents and "[t]his case concerns safety issues on a grand scale."

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Bridgestone petitioned this court for extraordinary writ relief. We issued an order to show cause and stayed all trial court proceedings against Bridgestone.

CONTENTIONS

Bridgestone contends that (1) its sale of tires to Firestone in Japan with the expectation that Firestone would sell tires in California does not constitute activity purposefully directed toward California so as to support personal jurisdiction; (2) its license agreement with Firestone in addition to the tire sales does not constitute activity purposefully directed toward California; (3) Truckers' cross-complaint for equitable indemnity and contribution does not arise out of the license agreement, so there is no basis for specific jurisdiction; and (4) California does not have a substantial interest in Bridgestone's dispute with Truckers because the dispute involves primarily indemnification, not product safety.

DISCUSSION

1. *Constitutional Limits to the Exercise of Personal Jurisdiction*

A California court may exercise personal jurisdiction to the extent allowed under the United States Constitution and the California Constitution. (Code Civ. Proc., § 410.10; *Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at p. 444.) Under the Fourteenth Amendment due process clause, a state court may exercise personal jurisdiction over a nonresident defendant who has not been served with process inside the state only if the defendant has sufficient "minimum

contacts" with the state so that the exercise of jurisdiction is reasonable and comports with " 'fair play and substantial justice.' " (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316-317; *Vons Companies*, at p. 444.)

A nonresident defendant whose activities within the state are substantial, continuous, and systematic is subject to "general jurisdiction" in the state, meaning jurisdiction on any cause of action. (*Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445-446; see *Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at pp. 445-446.) Absent such pervasive activities, a defendant is subject to "specific jurisdiction" only if (1) the defendant *purposefully availed* itself of the benefits of conducting activities in the forum state by purposefully directing its activities toward the state, thereby obtaining the benefits and protections of the state's laws (*Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at pp. 475-476; *Vons Companies*, at pp. 449-451); (2) the dispute arises out of or has a substantial connection with the defendant's contacts with the state (*Vons Companies*, at pp. 452-453; see *Burger King*, at p. 472); and (3) the exercise of jurisdiction would be fair and reasonable (*Burger King*, at pp. 476-478; *Vons Companies*, at pp. 447-448). These guidelines are not susceptible of mechanical application, and the jurisdictional rules are not clear-cut. Rather, a court must weigh the facts in each case to determine whether the defendant's contacts with the forum state are sufficient. (*Burger King*, at pp. 478-479, 486, fn. 29; *Kulko v. California Superior Court* (1978) 436 U.S. 84, 89, 92; *Vons Companies*, at p. 450.)

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A plaintiff opposing a motion to quash service of summons bears the initial burden to demonstrate facts that support the exercise of jurisdiction. If the plaintiff satisfies that burden, it then shifts to the defendant to "present a compelling case" that the exercise of jurisdiction would be unreasonable. (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at p. 477; *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pp. 449, 476.)

We review the trial court's factual findings in connection with its ruling on the motion under the substantial evidence standard. (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 449.) If there is no conflicting evidence, whether the court can exercise personal jurisdiction is a legal question that we review de novo. (*Ibid.*) We review the trial court's ruling, not its reasoning. (*Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 568.)

2. *Bridgestone Purposefully Availed Itself of the Benefits of Conducting Activities in California*

The parties' dispute turns largely on the question whether, as a matter of law, Bridgestone's tire sales to Firestone in Japan with the expectation that Firestone or another company would sell the tires to consumers in California constitutes purposeful availment of the benefits of conducting activities in this state. We conclude that under governing United States Supreme Court and California Supreme Court precedents the answer is yes.

Appendix A

a. *Stream of Commerce*

The United States Supreme Court has explained that placing goods in the stream of commerce with the expectation that they will be purchased by consumers in the forum state indicates an intention to serve that market and constitutes purposeful availment (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at p. 473; *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297-298; see *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 447) as long as the conduct creates a " 'substantial connection' " with the forum state (*Burger King*, at p. 475).

"[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. [Citation.]" (*World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at pp. 297-298.)

The foreseeability that the defendant's product will cause injury in the forum state due to an isolated incident does not establish purposeful availment. (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at p. 474; *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 295.) A defendant

cannot be haled into court based on " 'random,' 'fortuitous,' or 'attenuated' contacts, [citations]" or based on the " 'unilateral activity of another party or a third person,' [citation]." (*Burger King*, at p. 475, fn. omitted.) Rather, there must be some act by which the defendant creates a " 'substantial connection' " with the forum state " 'such that he should reasonably anticipate being haled into court there.' " (*Burger King*, at pp. 474, 475.)

The California Supreme Court has equated purposeful availment with " 'engaging in economic activity within this state "as a matter of commercial actuality." ' " (*Secrest Machine Corp. v. Superior Court*, *supra*, 33 Cal.3d at p. 669, quoting *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 902.) It has explained that if the purchase or use of a product in California " 'generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negative the existence of an intent on the manufacturer's part to bring about this result,' " the manufacturer has obtained the benefits and protections of California's laws, and the requirement of purposeful availment is satisfied. (*Secrest*, at p. 669, quoting *Buckeye Boiler*, at p. 902.) The court in *Secrest* distinguished the mere foreseeability that a product would cause injury in the forum state from those circumstances where the sale of a product " 'arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product. . . .' " (*Secrest*, at p. 670, quoting *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at pp. 297-298.) The *Secrest* court concluded, consistent with *World-Wide Volkswagen*, that in the latter circumstance it is reasonable to subject the manufacturer to personal jurisdiction in the forum state. (*Secrest*, at p. 670.)

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The defendant in *Secrest Machine Corp. v. Superior Court*, *supra*, 33 Cal.3d 664 sold an industrial machine directly to a California user, sent an employee to California to assist in the installation, and later provided spare parts and advice on maintenance and advertised other products for sale. (*Id.* at pp. 670-671.) The *Secrest* court concluded that the sale was not simply an isolated occurrence but resulted from the defendant's efforts to serve the California market. The court concluded that in those circumstances and since the defendant earned substantial income from the sale, the defendant had engaged in economic activity in California " 'as a matter of commercial actuality.' " (*Id.* at p. 671.)

Several California courts have applied this rule, holding that the defendant's sales to California distributors or other efforts to market a product to customers in this state indirectly through an intermediary constituted economic activity within California as a matter of commercial actuality where the defendant earned gross income from the activity. (*As You Sow v. Crawford Laboratories, Inc.* (1996) 50 Cal.App.4th 1859, 1871; *Furda v. Superior Court* (1984) 161 Cal.App.3d 418, 424; *St. Joe Paper Co. v. Superior Court* (1981) 120 Cal.App.3d 991, 999-1000; *Sanders v. CEG Corp.* (1979) 95 Cal.App.3d 779, 785-786.) In *As You Sow*, the court held that a manufacturer whose only contacts with California were through a series of sales to California distributors was subject to personal jurisdiction because the sales to California distributors reflected an effort to benefit from the California market and constituted economic activity within California " ' "as a matter of commercial actuality." ' [Citation.]" (*As You Sow*, at pp. 1864-1865, 1871.)

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The United States Supreme Court addressed the stream of commerce doctrine in *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, but the justices were split on the issue and did not hold on point. The majority holding in *Asahi* was that it was unreasonable to exercise jurisdiction over the defendant regardless of whether there was purposeful availment (*id.* at p. 114), as discussed *post.* Thus, *Asahi* did not overrule prior United States Supreme Court opinions articulating the stream of commerce doctrine and did not affect California's "commercial actuality" standard expressed in *Secrest Machine Corp. v. Superior Court*, *supra*, 33 Cal. 3d 664. (But see *Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.3d 106, 114-117.)

We conclude that a manufacturer's placement of goods in the stream of commerce with the expectation that they will be purchased or used by consumers in California indicates an intention to serve the California market "directly or indirectly" (*World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 297) and constitutes purposeful availment if the income earned by the manufacturer from sale or use of its product in California is substantial. (*Secrest Machine Corp. v. Superior Court*, *supra*, 33 Cal.3d at pp. 669-670; see *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 447.)

b. *Application of the "Purposeful Availment" Requirement to this Case Supports Jurisdiction Over Bridgestone*

Bridgestone sold at least 25,000 tires per month to Firestone in Japan for delivery to California, approximately

one-half of which were sold to consumers in California. Bridgestone's representatives visited Firestone's distribution center in Ontario and undoubtedly were aware of the large volume of Bridgestone tires that Firestone regularly distributed for sale in California. Bridgestone's sale of tires in Japan for resale in California was not random or fortuitous, and Bridgestone earned substantial income from those sales. We therefore conclude that by purposefully directing its tire sales toward California, Bridgestone purposefully availed itself of the benefits of conducting activities in this state.

3. *The Dispute Arises Out of or Is Substantially Connected to Bridgestone's California Contacts*

The dispute must arise out of or have a substantial connection to the defendant's contacts with the forum state for the defendant to be subject to specific jurisdiction. (*Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at pp. 445-446; *Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at p. 472.)

Truckers allege causes of action against Bridgestone for equitable indemnity and contribution and seek to impose liability on Bridgestone as manufacturer, designer, and supplier of the allegedly defective tire. Bridgestone's contacts with California are based on its tire sales to Firestone, as describe *ante*. Since Bridgestone sold the tire to Firestone in the course of those sales, the dispute arises out of or is substantially connected to Bridgestone's California contacts.

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4. *The Exercise of Jurisdiction Would Be Fair and Reasonable*

Bridgestone has not satisfied its burden of showing that the exercise of jurisdiction would be unreasonable in this case. Apart from its arguments against the first two elements, Bridgestone's only relevant argument going to reasonableness is that California does not have a substantial interest in the dispute because the dispute involves primarily indemnification, not product safety, citing *Asahi Metal Industry Co. v. Superior Court*, *supra*, 480 U.S. 102.

Asahi Metal Industry Co. v. Superior Court, *supra*, 480 U.S. 102 involved a cross-complaint for indemnity by a Taiwanese manufacturer of motorcycle tire tubes against Asahi, a Japanese manufacturer of tire tube valve assemblies. (*Id.* at p. 106.) The high court held that Asahi was not subject to specific jurisdiction in California because, regardless of whether the cross-complainant established purposeful availment, it was unreasonable to exercise jurisdiction in California. (*Id.* at p. 114.) It stated that in evaluating the reasonableness of personal jurisdiction, a court must consider (1) the burden on the foreign defendant of defending an action in the forum state; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining relief; (4) judicial economy; and (5) the states' shared interest " 'in furthering fundamental substantive social policies.' " (*Id.* at p. 113; citing *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 292.) When minimum contacts are established, the interests of the plaintiff and forum state often outweigh the serious burdens imposed on a foreign defendant. (*Asahi*, at p. 114.)

The *Asahi* court concluded, however, that the interests of the Taiwanese manufacturer and California were slight, for several reasons: the dispute involved only an indemnity claim between two foreign parties based on a transaction that took place in Taiwan; it would not be more convenient to litigate in California; California's interests were considerably diminished because the cross-complainant was not a California resident; and the state's interest in enforcing its safety standards was not at issue because the dispute concerned primarily indemnification and California law did not necessarily apply. (*Asahi Metal Industry Co. v. Superior Court*, *supra*, 480 U.S. at pp. 114-115.) The high court stated that a court should be cautious in extending personal jurisdiction to a foreign defendant where the interests of the plaintiff and forum state are minimal. (*Id.* at p. 115.) Based on those considerations, the court concluded that it would be unreasonable and unfair to exercise personal jurisdiction over Asahi in California. (*Id.* at p. 116.)

Bridgestone has not made a similar showing here. Truckers apparently are all California residents whose common interest in convenient and effective relief is best served by a California forum, and California has an interest in providing a convenient forum for its residents to redress injuries caused by out-of-state actors. (*Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at p. 473; *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 473.) This is true particularly where Truckers are currently defending an action in California in which Bridgestone may share some liability, as was the case in *Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th 434, which also involved a cross-complaint for indemnity. (*Id.* at pp. 442, 477.)

Moreover, judicial efficiency is best served by litigating the plaintiff's claims against Truckers and Truckers' claims against Bridgestone in a single forum. (*Id.* at p. 477.) We conclude that these factors outweigh the burdens placed on Bridgestone to defend itself in California.

DISPOSITION

The petition is denied. The order to show cause is discharged, and the stay of all trial court proceedings against Bridgestone is lifted. Truckers shall recover their costs in this writ proceeding.

CERTIFIED FOR PUBLICATION

KITCHING, J.

We concur:

KLEIN, P.J.

ALDRICH, J.

APPENDIX B — DECISION OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES DATED AND ENTERED JUNE 13, 2001

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

HONORABLE EDWARD A. FERNS

BC206120

JOHN S LEE

VS

KENAI DRILLING LTD

MOTION OF SPECIALLY APPEARING CROSS-DEFENDANT BRIDGESTONE CORPORATION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

In this matter taken under submission on May 11, 2001, the court rules as follows.

The motion is denied.

Cross-complainant has the burden of proving by a preponderance of competent evidence that California has personal jurisdiction over cross-defendant. *Ziler Electronic Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232-33. In order to satisfy this burden, cross-complainant must establish that cross-defendant has minimum contacts in the forum and that "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 2181-82 (1985).

Appendix B

Cross-complainant has come forward with evidence that "[t]he Ontario, California Bridgestone/Firestone, Inc., West Coast Distribution Center ("West Coast Distribution Center") is the exclusive point of receipt in North America for tire products 'manufactured by BRIDGESTONE Corporation of Japan for redistribution throughout North America." An enormous amount of tires is shipped from Japan to the West Coast Distribution Center. In turn, the West Coast Distribution Center ships the tires to California, Hawaii, Nevada, Utah, Arizona, New Mexico and Colorado. The tires go to 850 to 900 Bridgestone/Firestone dealers for resale to the public. Approximately 425 to 450 Bridgestone/Firestone dealers are located in California. Approximately half of the product is redistributed to locations in California. Plaintiff purchased the subject tire at one of these dealerships in Bakersfield, California.

There is no evidence that BRIDGESTONE Corporation of Japan sold the tires in California. Instead, the evidence shows that the transactions in which BRIDGESTONE Corporation of Japan participated in were limited to selling the product in Japan to its subsidiary, Bridgestone/Firestone. However, it is axiomatic that a local subsidiary's contacts with the forum do not create personal jurisdiction over a foreign parent. *J.M. Sahlein Music Co., Inc. v. Nippon Gakki Co., Ltd.* (1987) 197 Cal.App.3d 539, 544. Instead, plaintiff must show that "the agent [subsidiary] perform some service or engage in some (meaningful activity in the forum state on behalf of its principal such that its presence substitutes for the presence of the principal. *Doe v. Unocal* (1998) 27 F.Supp.2d 1174, 1184. There has been no showing that cross-defendant has utilized its subsidiary in such a manner. The business relationship between BRIDGESTONE Corporation of Japan and the West Coast Distribution Center

has been limited to the exchange of a few emails and a few phone calls pertaining to the mechanics of distributing the 8 to 12 million pounds of rubber products to its subsidiary purchased in Japan. Plaintiff has not shown that cross-defendant's subsidiary has performed substantial activities for its benefit, therefore, no jurisdiction can be found under the "general agency test" of *Doe.*

"If jurisdiction is to be found, it must be foreseeable from the defendant's conduct and connection with the forum State that it should reasonably have anticipated being haled into court there." *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 472-473. An example of such conduct is where a corporation purposefully avails itself of the privilege of conducting activities within the forum State. *Hanson v. Denckla* (1958) 357 U.S. 235, 253. In *Asahi Metal Industry Co., Ltd. v. Superior Court* (1987) 480 U.S. 102, 111, the court held that California could not exercise jurisdiction over a Japanese manufacturer of valve stems for tire tubes manu-factured in Taiwan, even though the manufacturer understood that 20% of the tires would be sold in California. The court stated that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of

placing the product into the stream into an act purposefully directed toward the forum State."

The question in this case, then, is whether there is something "additional" to placing the product into the stream of commerce such that it may be said that cross-defendant should reasonably have anticipated being haled into court in California. Unlike the *Asahi* case, cross-complainant did not simply manufacture a part to be used in tires which would ultimately reach California. Instead, cross-defendant manufactured tires which were to be sold primarily in California. The marketing of the tires was accomplished by Bridgestone/Firestone, Inc., however, in order for Bridgestone/Firestone, Inc., to be in a better position to market those tires, the cross-defendant and Bridgestone/ Firestone, Inc., entered into a licensing agreement so that the latter could "take advantage of each of BSJ trademarks and the goodwill associated therewith" (Trademark License Agreement, Exhibit "D" to supplemental opposition"). Thus, a distribution system which involved the symbiotic relationship between parent and subsidiary was utilized to market the tires primarily to California customers.

Also, here, unlike the *Asahi* case, California has a strong interest in this case. In *Asahi*, a foreign corporation sought indemnity against another foreign corporation and chose California as a forum. Here, the injured parties are California residents who were allegedly injured by a product which is apparently sold to thousands of California residents. This case concerns safety issues on a grand scale.

APPENDIX C — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW DATED AND FILED SEPTEMBER 25, 2002

Court of Appeal, Second Appellate District,
Division Three - No. B151190
S108911

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BRIDGESTONE CORPORATION,

Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR COURT,

Respondent;

T & T TRUCK & CRANE SERVICE, INCORPORATED et al.,

Real Parties in Interest.

Petition for review DENIED.

The request for an order directing depublication of the opinion is denied.

GEORGE
Chief Justice

Supreme Court, U.S.
FILED
JAN 29 2003
OFFICE OF THE CLERK

No. 02-977

In The

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

vs.

T & T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California For The Second Appellate District, Division Three

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OBJECTION TO QUESTIONS PRESENTED

Respondents Kenai Drilling Limited ("Kenai") and T & T Truck & Crane Service, Inc. ("T&T") object to the Petitioner's statement of the questions presented to the extent that the Petitioner purports therein a lack of control on its behalf with respect to the distribution of its tires in the forum state. The Petition's two questions presented differ from the single issue presented upon petition for review of the decision by the Court of Appeal, which issue did not reference the control of product distribution. By virtue of the fact that the Petitioner's tires were distributed in the United States, including the forum state, through its wholly-owned subsidiary, Bridgestone/Firestone, Inc., it may be said that the Petitioner did, in fact, have "control" over such distribution. There is also evidence that the two corporations share executive officers, and the Petitioner would likely undertake to set up its own office to manage the distribution of its tires in the U.S. if such were not being done by Bridgestone/Firestone, Inc. Consequently, this joint control by the Petitioner and its subsidiary in the distribution of tires in California should be taken into account in the determination whether California may exercise jurisdiction over the Petitioner, and the Petitioner's addition of an inaccurate fact to the equation serves as grounds for denial of certiorari.

Respondents also object to the questions presented in that they vary from the single issue presented by the Petitioner in its Petition for Review submitted to the Supreme Court of California, which issue states:

OBJECTION TO QUESTIONS PRESENTED – Continued

> Does a California court offend the traditional notions of fair play and substantial justice in the Due Process Clause of the Fourteenth Amendment to the United States Constitution when, in a personal injury indemnity action, it exercises personal jurisdiction over a foreign defendant that manufactured its product abroad, and sold and delivered its product abroad to a legally independent distributor, solely on the bases that: (1) the defendant may have expected some of its product would reach California in the stream of commerce, (2) the defendant indirectly earns substantial revenue from its product's use in California, and (3) the particular product involved in the action was resold in California to the ultimate consumer?

The issue thus posed below concerned whether due process is violated when jurisdiction is exercised in the face of a mere possible expectation that the defendant's product would reach California, while the questions currently presented incorporate an assumption that the defendant expected its product would reach the California market. Respondents contend that since the questions presented in the Petition fail to reflect the precise issue presented below, it would be improvident for this Court to grant the Petition.

Finally, Respondents object to the formulation of the questions presented in that the second question presented is subsumed within the first question. Both questions deal with the issue of whether the Due Process Clause has been violated and with a foreign manufacturer's placement of a product in the stream of commerce. The second question's

OBJECTION TO QUESTIONS PRESENTED – Continued

inclusion of the fact that the product "ultimately reaches the forum state" does nothing to render the second question different from the first, as the first question references "products brought into the forum state." Rule 14 requires that a petition for a writ of certiorari contain "[t]he questions presented for review" omitting "unnecessary detail," and provides that "[t]he statement of any question presented is deemed to comprise every subsidiary question fairly included therein." The second question regarding whether "traditional notions of fair play and substantial justice" are violated under a set of facts is clearly covered by the first question, which simply asks whether the Due Process Clause is violated under the same facts. Therefore, in considering whether to grant the Petition, the second question presented should be disregarded, as a finding in the positive as to the first question would necessitate a similar answer to the second question.

STATEMENT PURSUANT TO RULE 29.6

Respondent Kenai Drilling Limited has no parent corporation, and no publicly held company owns 10% or more of its stock. Respondent T & T Truck & Crane Service, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

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REASONS TO DENY THE PETITION

A. Certiorari Should Be Denied Because the Manner in Which the Questions Presented in the Petition are Framed is Substantially Different from the Statement of the Issue Presented Below

Ordinarily, this Court "do[es] not decide questions neither raised nor resolved below." *Glover v. United States*, 531 U.S. 198, 204 (Ill. 2000) (citing *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992)). With respect to a respondent's contention, following the granting of a writ of certiorari, that claims made by the Petitioner were not made in the same fashion below, it was stated by this Court that "because respondent did not oppose our grant of review at that time based on her contention that these claims were not pressed below, we will not dismiss the writ as improvidently granted," suggesting that the framing of questions in a different fashion on petition for a writ of certiorari serves as grounds for denial of the writ. *St. Louis v. Praprotnik*, 485 U.S. 112, 119 (1988). As set forth above in the Respondents' Objection to Questions Presented, the questions presented in the Petition are substantially different from the issue presented below. Accordingly, this Court should exercise its discretion to deny certiorari.

B. There is No Compelling Reason to Grant Certiorari, as the Lower Court's Decision is Consistent with Established Precedent

The Petitioner seeks review of the Court of Appeal's ruling upholding the trial court's Order denying its motion to quash service of the cross-complaint brought by Respondents. The record herein reveals that the Superior Court and Court of Appeal ruled correctly in finding that

the trial court has jurisdiction over Bridgestone Corporation. Contrary to what is stated in the Petition [Petition 10], there is ample evidence in the record that the Petitioner knew that 25,000 of its tires were being shipped, per month, to a California-based branch of its wholly-owned subsidiary Bridgestone/Firestone, Inc. for distribution to approximately 450 dealers in California, and as many dealers elsewhere in North America. [Petition 4a] Respondents contend that, under *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 112 (1987), minimum contacts are established by the Petitioner's placement of its tires in the stream of commerce, with the clear expectation that they would reach California, and by the designing of its tires to meet U.S. importation requirements. Additional conduct by the Petitioner which may serve as justification for finding minimum contacts includes its "advertising in the forum State," via the internet, and "marketing of the product through a distributor who has agreed to serve as the sales agent in the forum State," i.e., Bridgestone/Firestone, Inc., both of which acts parallel the examples cited in *Asahi* concerning indications of intent to serve the forum state. *Id.*

None of the three instances in which certiorari is appropriate, according to Rule 10, is present in the instant case, because the decisions of the Court of Appeal and Superior Court are consistent with the current caselaw in question, including *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Nowhere in the opinion of the Court of Appeal herein does the Court indicate that it is departing from the above-mentioned decisions, as the Petitioner implies. [Petition 13-15] Rather, the

opinion follows *World-Wide Volkswagen's* indication that due process has been afforded if the court "asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." [Petition 8a, citing *World-Wide Volkswagen*, 444 U.S. at pp. 297-298.] The Court of Appeal also conducted an analysis of the reasonableness of California's assertion of jurisdiction over the Petitioner in accordance with *Burger King* [Petition 13a-15a]. Finally, as explained in the Court of Appeal's decision, the *Asahi* case did not overrule prior opinions regarding the stream of commerce doctrine and did not affect the "commercial actuality" standard. [Petition 11a] Hence, there is no conflict with respect to *Asahi*.

Even if *Asahi* may be interpreted as a departure from the stream of commerce analysis, this theory was not rejected by a majority in *Asahi*, leaving the courts free to employ this theory in evaluating the issue of whether minimum contacts exist for the purpose of finding specific jurisdiction. As such, the Court of Appeal's decision herein is consistent with the decisions of other federal and state courts. Moreover, in each of the cases cited in the Petition as reflecting a decision to "ignore" *Asahi*, there were, indeed, acts of "purposeful availment" in those cases in which jurisdiction was found, or the court simply ruled that minimum contacts were not present or that *Asahi* was distinguishable on the facts. None of these cases represent a departure from established precedent, rendering it inappropriate for this Court to grant certiorari herein.

In *Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383 (5th Cir. 1989), the defendant shared in the cost of quality control testing by a laboratory in the forum state,

accepted payments for the product in question, and received debits for bag-cleaning charges of a company based in the forum state. *Id.* at p. 386. The defendant manufacturer in *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 613-614 (8th Cir. 1994), was found to have benefitted from regional distribution efforts of its distributor, which sold the subject product in the forum state, much as Bridgestone has benefitted from the distribution efforts of Bridgestone/Firestone, Inc., herein; such benefits clearly constitute the "something more" contemplated in *Asahi*. In *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1549 (11th Cir. 1993), the defendant's design of a vehicle for use in the United States was held to constitute an act of purposeful availment with respect to the privilege of conducting business in the forum state of Georgia, which conduct served as an example of the type of additional act necessary to withstand the analysis set forth in *Asahi*. *See Asahi*, 480 U.S. at p. 112; *see also* discussion in **Section D**. below.

In *Ham v. La Cienega Music Co.*, 4 F.3d 413, 416 FN12 (5th Cir. 1993), the court ruled that minimum contacts were lacking, since there was no substantial relationship between the subject matter of the declaratory judgment action at issue and the forum-related activities; hence, the resulting ruling is not inconsistent with *Asahi*. The court in *Keen v. Ashot Ashkelon, Ltd.*, 748 S.W.2d 91, 93 (Tex. 1988), held that *Asahi* was distinguishable, but nonetheless found that there was a "reasonable expectation" on the part of the defendant that its product would reach the forum state, such that the facts therein also included "something more" than the placement of the article in question into the stream of commerce.

Since the opinion of the Court of Appeal herein is in keeping with prior law, is not in conflict with a decision by any other U.S. Court of Appeals, and does not decide an important federal question in a way that conflicts with the decisions of any other U.S. Court of Appeals or state court of last resort, there is no need for this Court to review the matter.

C. The Exercise of Jurisdiction by the Trial Court over the Petitioner is Reasonable

The opinion of the Court of Appeal reflects a careful weighing of the factors indicating whether jurisdiction in California would be reasonable, contrary to the assertion in the Petition that the Court "never truly analyzed reasonableness." [Petition 13 and 13a] In its account of this analysis, the court noted the fact that the ruling in *Asahi* was based on the slight interest of the forum state in an indemnity claim between two foreign entities, which reference belies the suggestion in the Petition that the Court of Appeal failed to consider the reasonableness of California's exercise of jurisdiction over the Petitioner. [Petition 14a] Although the remaining claim to be tried is one for indemnity, it stems from a claim for personal injury from a tire which may be ultimately found to have been defective. Thus, the concern for public safety is an appropriate factor in determining the question of jurisdiction herein, as California has a compelling interest in protecting persons within its borders from unsafe products that find their way into the state. *See Morris v. SSE, Inc.*, 843 F.2d 489, 495 (11th Cir. 1988). Moreover, the *Asahi* case is clearly distinguishable from the instant case, as both Kenai and T&T are residents of California.

In *Calder v. Jones*, 465 U.S. 783 (1984), the United States Supreme Court articulated the "effects test" for the purposeful availment element of the jurisdictional analysis. The test seeks to identify "(1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered – and which the defendant knows is likely to be suffered – in the forum state." *Panavision Intern., L.P. v. Toeppen*, 141 F.3d 1316, 1320, 1321 (9th Cir. 1988). In *Yahoo! Inc. v. La Ligue Contre Le Racisme Et, L'antisemitisme*, 2001 U.S. Dist. LEXIS 7565, the court indicated that the *Calder* effects test may be satisfied in cases wherein the plaintiff seeks only declaratory relief, as the thrust of the inquiry is on whether "the defendant's forum-related acts evidenced intentional, or at the very least knowing, targeting of a forum resident(s)." *Yahoo*, at p. 15. "The focus on evidence of "express aiming" reflects the basic rationale of the effects test in that it assures that a defendant is on notice that it may be subject to suit in the forum state with respect to its forum-related or targeted activities." *Id.* at p. 16. The court in *Yahoo* noted that in cases where the effects test was applied to a declaratory relief action, and personal jurisdiction was found, "the court generally has concluded or assumed that the underlying allegations sounded in tort." *Id.* at p. 14, n.3.

Although the Petition seeks to argue that *Asahi* stands for the proposition that the interest of the forum state is minimal when the dispute against the foreign entity involves indemnity, the selection of the forum of California in *Asahi* was incidental, while the forum state in the instant case is the target of vast sales of Bridgestone Corporation products. Even if there were any significance in the fact that the action herein is one for

indemnity, the *Yahoo* opinion makes it clear that the effects test may nonetheless be applied.

The Court of Appeal cited to *As You Sow v. Crawford Labs, Inc.*, 50 Cal.App.4th 1859 (1996), for its finding of economic activity as a matter of commercial actuality based upon that activity's reflection of "an effort to benefit from the California market." [Petition 10a, citing *As You Sow*, at pp. 1864-1865, 1871]. Thus, the fact that there were no direct sales by Bridgestone in California is irrelevant. As discussed above in Respondents' Objections to Questions Presented, Bridgestone retains joint control over the distribution of its tires in California. Moreover, Bridgestone's own website and public relations activities in the U.S. likely engendered many of the sales of the 25,000 tires received per month in California in the past two years. It is, therefore, evident that the Court of Appeal reached a correct result in its analysis of the reasonableness of the forum state's exercise of jurisdiction over the Petitioner.

D. If the Petition is Granted, then the Proper Issue for Consideration is Whether a Manufacturer's Use of a DOT Number May, When Coupled with Evidence of an Expectation that the Product will be Sold in the Forum State, Subject the Manufacturer to the Specific Jurisdiction of the Forum State

It was held in *Asahi* that minimum contacts are satisfied when the defendant places its product into the stream of commerce and engages in some additional activity directed to the forum state, such as "designing the product for the market in the forum State." *Asahi*, 480 U.S. at p. 112. A number of courts have looked to this

example of what additional conduct is required under *Asahi*, beyond placement of a product in the stream of commerce, to find specific jurisdiction in cases wherein the defendant designed its product for general distribution in the United States. *See Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1549 (11th Cir. 1993), discussed *infra*, under Section II; *Tobin v. Astra Pharmaceutical Prods., Inc.*, 993 F.2d 528, 543 (6th Cir. 1993) (seeking and obtaining approval from the Federal Drug Administration to sell drug in the United States indicates an intent or purpose to serve the forum state, thus satisfying minimum contacts); *see also Gulf Consolidated Serv., Inc. v. Corinth Pipeworks, S.A.*, 898 F.2d 1071, 1074 (5th Cir. 1990) (designing pipe to Texas organization's specifications showed intent to have products used in forum state, thus satisfying minimum contacts). In fact, since this Court's decision in *Asahi*, no federal Circuit Court of Appeals has declined to exercise jurisdiction over a foreign defendant manufacturing products that are designed to comply with state or federal regulations. Thus, there is no unsettled issue of jurisdictional law with respect to defendants, like Bridgestone, who intentionally design their products to conform to standards or regulations in the United States.

The record below confirms that the technical expert for the Petitioner's wholly-owned subsidiary, Bridgestone/Firestone, Inc., James D. Gardner, identified the tire which is the subject of this litigation as an M857 truck tire with "D.O.T." No. EK 17 3LJ098. The fact that the tire has been assigned a "D.O.T" (Department of Transportation) number evidences that the Petitioner is registered with the U.S. Government as a tire manufacturer and that it conformed its tire specifications to the requirements of the

forum state in order to ship tires to the United States for distribution in California, among other states.

The National Highway Traffic Safety Administration ("NHTSA") regulations regarding items of motor vehicle equipment imported for sale in the United States are codified in 49 CFR 400, et seq. To gain a certification of compliance with 49 CFR 574.6, a foreign manufacturer of tires must secure an identifier from the NHTSA with which to label its products. A DOT symbol and the manufacturer's identifier on the product then serves as a certification of compliance. Thus, the appearance of the DOT number on the tire necessarily means that the Petitioner designed its tires to include markings in accordance with the foregoing NHTSA regulation.

Moreover, 49 CFR 551 requires manufacturers of equipment for motor vehicles for importation into the United States to designate a permanent resident of the United States as the manufacturer's agent for service of all process, with such designation to be mailed to the NHTSA Chief Counsel. While it appears that the Petitioner failed to comply with this requirement, thereby forcing the Respondents to serve the Petitioner in Japan pursuant to the Haigue convention, the fact that it was required to designate an agent for service of process should evidence a reasonable expectation on its behalf that it would be haled into court in California, the base state for its exclusive point of receipt for distribution throughout North America.

Should this Court be inclined to grant certiorari, then the body of law ripe for examination is that surrounding the issue whether a manufacturer's conforming of its specifications to meet federal regulatory standards, in

conjunction with evidence of an expectation that the manufacturer's articles will reach the forum state, establishes enjoyment of a benefit sufficient to satisfy the requirement of minimum contacts and to confer jurisdiction upon the forum state over the Petitioner as a matter of law.

CONCLUSION

The Petitioner has failed to show this Court that there are any compelling reasons to grant certiorari. The Court of Appeal was correct in determining that the trial court may properly exercise jurisdiction. Based on the fact that the rulings of the lower courts are consistent with current federal law, and for the reasons set forth above, the Respondents, Kenai and T&T, respectfully request that the Petition for certiorari be denied.

Dated: January 29, 2003

Respectfully submitted,

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Supreme Court U.S.
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(3)

No. 02-977

IN THE

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

v.

T&T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOR THE SECOND APPELLATE DISTRICT, DIVISION THREE

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of the Petition for a Writ of Certiorari, and there are no amendments to that statement.

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INTRODUCTION

In their opposition, Truckers do not genuinely challenge the appropriateness or desirability of the exercise of certiorari jurisdiction in this case. Instead, the arguments they advance mischaracterize the record and misstate the law. The underlying case remains unchallenged as the ideal tool for this Court to clarify the law of personal jurisdiction over foreign manufacturers—a subject that has received conflicting interpretations and applications since at least this Court issued its sharply divided opinion in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987)—and to remedy the unconstitutional exercise of jurisdiction by the California courts below. Certiorari jurisdiction is proper and the writ should issue.

I. The Questions Presented Are Proper

Truckers are wrong when they suggest that the questions presented here must be verbatim the questions raised below. (*See* Opp'n at i, ii & 1).

The very case relied upon by Truckers to make this argument actually rejects it:

> It should not be surprising if petitioner's arguments in the District Court were much less detailed than the arguments it now makes in response to the decision of the Court of Appeals. That, however, does not imply that petitioner failed to preserve the issue raised in its petition for certiorari. Accordingly, we find no obstacle to reviewing the question presented in the petition

> for certiorari, a question that was very clearly considered, and decided, by the Court of Appeals.

St. Louis v. Praprotnik, 485 U.S. 112, 120 (1988) (citation omitted).[1]

There is no requirement that a petitioner's formulation of the questions presented for review be identical—word for word—to the issues as they were first articulated in the lower courts. All that is required is that the questions presented were raised and resolved below. *Cf. Glover v. United States*, 531 U.S. 198, 205 (2001). They were.

II. The Record Presented In The Petition Is Accurate

Truckers also try to persuade this Court that the record is somehow "[c]ontrary to what is stated in the Petition." (Opp'n at 2). In fact, it is Truckers who misstate the record, as the following three examples demonstrate:

NO. 1: "Bridgestone retains joint control over the distribution of its tires in California." (Opp'n at 7).

The record shows no such thing. Indeed, the trial court actually held that "the transactions in which BRIDGESTONE Corporation of Japan participated were *limited to selling the product in Japan*." (Pet. at 17a) (emphasis added). The Court of Appeal agreed. (*See id.* at 7a ("The parties' dispute turns largely on the question whether . . . Bridgestone's tire sales to

1. Although Truckers cite *Praprotnik* in pressing their argument on this issue, the *obiter dictum* that they reproduce in the opposition is actually at *Canton v. Harris*, 489 U.S. 378, 384 (1989), a case that similarly does not support the sweeping conclusion touted by Truckers.

Firestone in Japan . . . constitutes purposeful availment . . . .").
Bridgestone's control over its tires begins and ends in Japan.

NO. 2: "[C]onduct by the Petitioner . . . includes its 'advertising in the forum State,' via the internet, and 'marketing of the product through a distributor who has agreed to serve as the sales agent in the forum State,' i.e., Bridgestone/Firestone, Inc. . . ." (Opp'n at 2).

Again, the record shows no such thing. There was no finding—and no discussion—of any Internet advertising by any party in either of the opinions below. The closest statement made by the trial court was that "the marketing of the tires was accomplished by *Bridgestone/Firestone, Inc.*," not Bridgestone. (Pet. at 19a) (emphasis added). The trial court also held that Firestone was *not* Bridgestone's sales agent. (*See id.* at 17a-18a). Again, the Court of Appeal agreed. (*See id.* at 4a ("[N]o evidence showed Bridgestone sold tires in California, and . . . Firestone did not act as Bridgestone's general agent in California.")).

NO. 3: "[T]here is ample evidence in the record that the Petitioner *knew* that 25,000 of its tires were being shipped, per month, to a California-based branch of its wholly-owned [*sic*] subsidiary Bridgestone/Firestone, Inc. for distribution to approximately 450 dealers in California . . . ." (Opp'n at 2) (emphasis added).

The trial court acknowledged evidence that a Firestone distribution center "is the exclusive point of *receipt* in North America for tire products manufactured by BRIDGESTONE Corporation of Japan for redistribution [by Firestone] throughout North America." (Pet. at 17a) (internal quotations omitted & emphasis added). However, as noted, the trial court also

explained that Bridgestone's control over its tires begins and ends in Japan. (*See id.*). There is no evidence in the record that Bridgestone had any knowledge about what Firestone does with the tires once title and possession to them is transferred in Japan, including how Firestone may distribute them in the United States. The Court of Appeal similarly observed only that "Firestone's distribution center in Ontario, California *receives* at least 25,000 tires per month manufactured by Bridgestone in Japan." (Pet. at 4a) (emphasis added). There is no record evidence at all about Bridgestone's knowledge.

III. No Federal Regulations Are Relevant To This Case

Truckers also raise new arguments not passed on below and propose an untimely cross-petition. Neither of these practices should be countenanced by the Court.

The new arguments raised by Truckers are that Bridgestone "design[ed] its tires to meet U.S. importation requirements" and "conformed its tire specifications to the requirements of the forum state." (Opp'n at 2, 8-9). There is no evidence in the record to support these assertions. Moreover, none of the courts below were presented with or passed upon them. Indeed, any Bridgestone contacts with the United States government, the United States generally, or any states other than California are irrelevant to the jurisdictional issue in this case. *See International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Truckers raise regulations promulgated by the National Highway Traffic Safety Administration, including 49 C.F.R. § 551, (Opp'n at 9), but never tell the Court that the statutory

authorization for the cited regulation was ***repealed*** almost a decade ago. *See* P.L. 103-272, § 7(b), 108 Stat. 1379 (July 5, 1994).[2]

Truckers conclude their inapposite discussion of regulatory standards by proposing the following:

> Should this Court be inclined to grant certiorari, then the body of law ripe for examination is that surrounding the issue whether a manufacturer's conforming of its specifications to meet federal regulatory standards, in conjunction with evidence of an expectation that the manufacturer's articles will reach the forum state, establishes enjoyment of a benefit sufficient to satisfy the requirement of minimum contacts and to confer jurisdiction upon the forum state over the Petitioner as a matter of law.

(Opp'n at 9-10).

The Court should reject this invitation. It constitutes an improper and untimely cross-petition for certiorari. *See* U.S. Sup. Ct. R. 13.4; *see also id.* 12.5, 13.1, 13.2, & 13.5. Additionally, the issue presented was neither raised nor passed upon below. *See Glover*, 531 U.S. at 205.

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2. Even so, the last published decision to discuss both the regulation and its authorizing statute concluded that the designation of the agency for service they purportedly required was "limited to service of documents by, of and from the United States Secretary of Transportation." *Richardson v. Vokswagenwerk, A.G.*, 552 F. Supp. 73, 78 (W.D. Mo. 1982). None of this is in any way relevant to the issue before the Court.

IV. The Reasons For Granting The Petition Remain, And Are Compelling

When Truckers address the issues of the petition, it remains clear that certiorari should be granted.

In response to the petition's point that the decision below conflicts with *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), Truckers sophistically assert that "[n]owhere in the opinion of the Court of Appeal herein does the Court indicate that it is departing from the above-mentioned decisions." (Opp'n at 2). Although it would be unusual for a state intermediate appellate court to deliberately defy this Court's governing authorities and in the process announce to the world that it was doing so, that does not make the California court's departure from governing law any less apparent.

Other than by misstating that the courts below found evidence of Bridgestone's participation in a "joint control" over the distribution of its tires in the United States, as discussed above, Truckers do little to defend the Court of Appeal's imputation of Firestone's unilateral activities to Bridgestone. Indeed, the only additional argument they advance in this regard harkens back to the "effects test" announced in *Calder v. Jones*, 465 U.S. 783 (1984). This test does not apply here.

The effects doctrine applies only to *intentional* torts, as shown by the cases upon which Truckers rely. *See Calder*, 465 U.S. at 785 & 789-90 (observing in action for libel and intentional infliction of emotional harm that "mere untargeted

negligence" will not trigger the effects doctrine); *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998) (defendant "purposefully registered Panavision's trademarks" to extort fees from the plaintiff); *Yahoo! Inc. v. La Ligue Contre Le Racisme Et, L'Antisemitisme*, 145 F. Supp. 2d 1168, 1174 (N.D. Cal. 2001) ("conscious intent" of actions expressly targeted at plaintiff compelled it to censor protected content on internet); *see also Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 429 (9th Cir 1997) (refusing to apply effects test because it is confined "to intentional torts"). Truckers' argument fails.

Truckers also fail in their attempt to show uniformity in the law of personal jurisdiction among the lower courts. Indeed, Truckers selectively discuss cases from only four courts—the Fifth Circuit, the Eighth Circuit, the Eleventh Circuit and the Texas Supreme Court—in their analysis, (Opp'n at 3-4), and ignore conflicting cases from the First, Third, Fourth, Sixth, Ninth and Federal Circuits, as well as the cases from the high courts of Louisiana, Michigan, Nebraska and Utah. All of these cases are addressed in the petition. (*See* Pet. at 17-21).

In electing not to confront the diverse views evident in the cases cited in the petition, Truckers also chose not to challenge the importance of the questions presented to the bench, the bar and the public. The exercise of personal jurisdiction over foreign defendants goes to the very core of the legitimate exercise of sovereign power under the Constitution.

CONCLUSION

For all of the foregoing reasons, as well as those stated in the petition, this Court should issue a writ of certiorari to review the decision of the California Court of Appeal.

Respectfully submitted,

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No. 02-977

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In The

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

vs.

T & T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, For The Second Appellate District, Division Three

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT PURSUANT TO RULE 29.6

Respondent Kenai Drilling Limited has no parent corporation, and no publicly held company owns 10% or more of its stock. Respondent T & T Truck & Crane Service has no parent corporation, and no publicly held company owns 10% or more of its stock.

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SECTION 551 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, REQUIRING DESIGNATION OF AN AGENT FOR SERVICE OF PROCESS, REMAINS VALID LAW

While the Petitioner's Reply indicates that 49 C.F.R. §551, regarding service of process on foreign manufacturers pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, cited in Respondents' Opposition at page 9, was repealed a decade ago, the statute that was actually repealed by Public Law 103-272, cited by Petitioner at page 5 of the Reply, was 15 U.S.C. §1399 (1994), which also relates to the designation of an agent for service of process under the foregoing Act. What Petitioner neglected to advise in the Reply is that, at the time 15 U.S.C. §1399 was repealed, 49 U.S.C. §30164 (1994), which essentially codified the laws set forth 15 U.S.C. §1399 and 49 C.F.R. §551.45, was simultaneously enacted.

In *U.S. v. Chrysler Corp.*, 995 F.Supp. 150, 152 fn1 (D.D.C., 1998), the Court stated as follows with regard to the legislative history associated with the repeal effected by Public Law 103-272, §7(b), 108 Stat. 1379 (July 5, 1994) as to the National Highway Traffic and Motor Vehicle Safety Act of 1966:

> This statute was originally codified at 15 U.S.C. § 1381 et seq. On July 5, 1994, the statute was repealed, and Congress contemporaneously enacted 49 U.S.C. § 30101 et seq. (1994), which has the exact same stated purpose as the 1966 Act. Pub.L. No. 103-272, § 7(b), 108 Stat. 1379 (1994). Congress sought to clarify ambiguities in

> the 1966 Act "without substantive change." H.R.Rep. No. 103-180, at 1, (1993), reprinted in 1994 U.S.C.C.A.N. 818, 819-20.

While the opinion in *U.S. v. Chrysler Corp.* was reversed, this recitation of the legislative history surrounding the repeal of various provisions of the National Highway Traffic and Motor Vehicle Safety Act of 1966 remains correct.

The following excerpt concerning other revisions to federal laws concerning transportation is also illustrative of the fact that the referenced repeal has no bearing on the requirements of 49 C.F.R. §551:

> [T]he recodification of the FRSA was part of its recodification of all "laws related to transportation in one comprehensive title." H.R.Rep. No. 108, 103d Cong., 2d Sess. 3 (1994), reprinted in 1994 U.S.C.C.A.N. 818, 820. While the 1994 recodification resulted in certain minor modifications in the language of the FRSA, the modifications did not result in substantive changes to the law. The language modifications were done merely for the purpose of promoting clarity and consistency. Id. ("In making changes in the language, precautions [were] taken against making substantive changes in the law.").

O'Bannon v. Union Pacific R. Co., 960 F.Supp. 1411, 1416 fn3 (1997).

Regarding the repeal of 15 U.S.C. §1399, the Historical and Statutory Notes to 15 U.S.C.A. §1399 state:

> Section 1399, Pub.L. 89-563, Title I, § 110, Sept. 9, 1966, 80 Stat. 723; Pub.L. 93-492, Title I, §§ 102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477,

> 1478, related to jurisdiction of United States district courts for injunctive relief for violations of this subchapter and related acts, trial by court or by jury in criminal contempt proceedings for violations of such injunctions, venue, subpoenas, and designation of agent for service of process. See sections 30163 through 30165 of Title 49.

The statute in which the subject laws were recodified, 49 U.S.C. §30164 (2003), provides in pertinent part as follows:

> § 30164. Service of process
>
> (a) Designating agents. – A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.
>
> (b) Service. – An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the manufacturer. If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary.

The legislative history for §30164 indicates "Added Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 968."

Finally, the title of 49 C.F.R. §551.45 (2003) states: "Code of Federal Regulations Title 49 – Transportation Subtitle B – Other Regulations Relating to Transportation Chapter V – National Highway Traffic Safety Administration, Department of Transportation Part 551 – Procedural

Rules Subpart D – Service of Process; Agents." Thus, there can be no question that the regulation noted in Respondents' Opposition is presently valid law.

Dated: February 24, 2003

Respectfully submitted,

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